

EXHIBIT R

Email regarding Fulton County Ballot Images

Subject: RE: Curling, et al. v. Raffensperger, et al., NDGA Case No. 17-cv-2989-AT
Date: Tuesday, December 21, 2021 at 12:15:55 PM Eastern Standard Time
From: Cary Ichter
To: Bryan Tyson, Ringer, Cheryl, Lowman, David
CC: Rob McGuire, Ringer, Cheryl, Josh Belinfante, Vincent Russo, Carey Miller, Rashmi Ahuja
Attachments: OEB 12-01-2020 Preserving Ballot Images for SOS.pdf

Cheryl, David and Bryan:

As you know, Coalition Plaintiffs have made numerous attempts since approximately April 2021 to obtain a full set of November 2020 original and recount ballot images and the related Election Project Packages. Fulton has acknowledged that the ballot images for In-Person voting were not preserved for the original count. This communication will not address those improperly destroyed records. However, despite clear and repeated RFPs and follow up emails and the Court's order, production of the requests has not been satisfactorily completed as described herein.

1. Approximately 17,600 ballot images files rescanned for the recount continue to be missing from the files as we reported after the first production of the recount images which failed to include all image files. It should be noted that the number of missing files exceed the statewide margin of victory in the presidential recount. Counties were given specific instructions to preserve images by way of the attached December 1 memo from the Secretary's office. Note that the Secretary required a copy of both Election Projects to be transmitted to the SOS office.

2. Some of the Recount Election Project files we received have been modified multiple times since they were created for transmission to the SOS office. The Election Project files were to be zipped, and a complete, unmodified copy should be available both from Fulton and the Secretary's office. We are seeking complete, unmodified copies of the zipped files for the recount Election Project Packages created for transmission to the Secretary.

Fulton staff reported in a meeting with Mr. Lowman and Ms. Marks that they transmitted copies of both packages (original and recount) to the Secretary of State in December 2020. A copy of the original count Election Project Package was produced in June 2021 by the Secretary of State.

Coalition Plaintiffs have inquired of Bryan Tyson whether the Secretary's office is in possession of a copy of the recount Election Package zipped and unmodified from the December 2020 transmission. On December 2, 2021, Bryan responded that the Secretary's office has been unable to locate the file. We request that another attempt be made by both Fulton and the Secretary's office to locate the complete recount Election Project file the Secretary ordered be sent to his office.

The importance of these unmodified files being available for targeted discovery cannot be overstated. As is already clear in the record, numerous vote count discrepancies have been detected in the tabulation of the November 2020 results in the home precincts of named plaintiffs and several active CGG members who are Fulton voters. The Court has requested that Plaintiffs target discovery for purposes of focus on specific injury-in-fact with respect to Plaintiffs' voting experiences. Given the significance of the vote count discrepancies detected in some of the home precincts of Fulton Plaintiffs using the incomplete and modified records, it is imperative to have complete, unmodified data files for an accurate reporting of these discrepancies.

If these files cannot be located the only rational conclusion we could draw is that they have been destroyed. If that becomes the unavoidable conclusion of our ongoing efforts to obtain these records, we will be compelled to file a motion for the imposition of spoliation sanctions against Defendants. We hope that will not be necessary.

Please let us hear from you promptly as to whether your clients will be producing complete and unmodified files for the Recount Election Project Package for November 2020.

Cary Ichter

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